

5308--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 15, 2011

Introduced by M. of A. GOTTFRIED, GUNTHER, PAULIN, LIFTON, LUPARDO, ENGLEBRIGHT, GABRYSZAK, HOOPER, N. RIVERA, JAFFEE, SCARBOROUGH, ROSENTHAL, CAHILL, PRETLOW, ORTIZ, BENEDETTO, CASTRO, GIBSON, BRONSON, RUSSELL, BRINDISI -- Multi-Sponsored by -- M. of A. BRENNAN, CROUCH, CUSICK, GALEF, HEVESI, LATIMER, LAVINE, LENTOL, PEOPLES-STOKES, REILLY -- read once and referred to the Committee on Higher Education -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the education law, in relation to establishing the nurse practitioners modernization act; and providing for the repeal of such provisions upon the expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "nurse practitioners modernization act".  
3 S 2. Subdivision 3 of section 6902 of the education law, as added by  
4 chapter 257 of the laws of 1988, is amended to read as follows:  
5 3. (a) (I) The practice of registered professional nursing by a nurse  
6 practitioner, certified under section six thousand nine hundred ten of  
7 this article AND PRACTICING FOR FEWER THAN THIRTY-SIX MONTHS AND THREE  
8 THOUSAND SIX HUNDRED HOURS, may include the diagnosis of illness and  
9 physical conditions and the performance of therapeutic and corrective  
10 measures within a specialty area of practice, in collaboration with a  
11 licensed physician qualified to collaborate in the specialty involved,  
12 provided such services are performed in accordance with a written prac-  
13 tice agreement and written practice protocols. The written practice  
14 agreement shall include explicit provisions for the resolution of any  
15 disagreement between the collaborating physician and the nurse practi-  
16 tioner regarding a matter of diagnosis or treatment that is within the  
17 scope of practice of both. To the extent the practice agreement does not

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 so provide, then the collaborating physician's diagnosis or treatment  
2 shall prevail. IN THE EVENT THAT (I) AN EXISTING WRITTEN PRACTICE  
3 AGREEMENT WITH A COLLABORATING PHYSICIAN TERMINATES AS A RESULT OF THE  
4 COLLABORATING PHYSICIAN MOVING, RETIRING, NO LONGER NEEDING THE SERVICES  
5 OF THE NURSE PRACTITIONER, NO LONGER BEING QUALIFIED TO PRACTICE OR UPON  
6 HIS OR HER DEATH AND THE NURSE PRACTITIONER IS UNABLE TO ENTER INTO A  
7 NEW WRITTEN PRACTICE AGREEMENT WITH ANOTHER COLLABORATING PHYSICIAN; OR  
8 IF (II) A NURSE PRACTITIONER OBTAINS APPROVAL BY THE DEPARTMENT BASED ON  
9 A DEMONSTRATION TO THE DEPARTMENT THAT AN EXISTING WRITTEN PRACTICE  
10 AGREEMENT WAS TERMINATED DUE TO NO FAULT ON THE PART OF THE NURSE PRAC-  
11 TITIONER, AND THAT THE NURSE PRACTITIONER IS UNABLE TO ENTER INTO A NEW  
12 WRITTEN PRACTICE AGREEMENT WITHIN ANOTHER COLLABORATING PHYSICIAN  
13 FOLLOWING A SHOWING OF GOOD FAITH EFFORT; THEN: SUCH NURSE PRACTITIONER  
14 MAY CONTINUE TO PRACTICE PURSUANT TO THIS PARAGRAPH WITHIN A SPECIALTY  
15 AREA OF PRACTICE FOR A PERIOD OF UP TO SIX MONTHS, IN COLLABORATION WITH  
16 A NURSE PRACTITIONER WHO HAS BEEN CERTIFIED UNDER SECTION SIX THOUSAND  
17 NINE HUNDRED TEN OF THIS ARTICLE, WHO HAS BEEN PRACTICING FOR MORE THAN  
18 THIRTY-SIX MONTHS AND THREE THOUSAND SIX HUNDRED HOURS AND WHO IS QUALI-  
19 FIED TO COLLABORATE IN THE SPECIALTY INVOLVED, PROVIDED THAT SERVICES  
20 ARE PERFORMED IN ACCORDANCE WITH A WRITTEN PRACTICE AGREEMENT AND WRIT-  
21 TEN PRACTICE PROTOCOLS; SUCH SIX MONTH TIME PERIOD FOR COLLABORATION  
22 BETWEEN NURSE PRACTITIONERS MAY BE EXTENDED FOR A PERIOD OF TIME NOT TO  
23 EXCEED AN ADDITIONAL SIX MONTHS UPON A SHOWING OF GOOD CAUSE SUBJECT TO  
24 THE APPROVAL OF THE DEPARTMENT.

25 [(b)] (II) Prescriptions for drugs, devices and immunizing agents may  
26 be issued by a nurse practitioner, under this [subdivision] PARAGRAPH  
27 and section six thousand nine hundred ten of this article, in accordance  
28 with the practice agreement and practice protocols. The nurse practi-  
29 tioner shall obtain a certificate from the department upon successfully  
30 completing a program including an appropriate pharmacology component, or  
31 its equivalent, as established by the commissioner's regulations, prior  
32 to prescribing under this [subdivision] PARAGRAPH. The certificate  
33 issued under section six thousand nine hundred ten of this article shall  
34 state whether the nurse practitioner has successfully completed such a  
35 program or equivalent and is authorized to prescribe under this [subdi-  
36 vision] PARAGRAPH.

37 [(c)] (III) Each practice agreement shall provide for patient records  
38 review by the collaborating physician OR, WHERE APPLICABLE, THE COLLAB-  
39 ORATING NURSE PRACTITIONER, in a timely fashion but in no event less  
40 often than every three months. The names of the nurse practitioner and  
41 the collaborating physician OR, WHERE APPLICABLE, THE COLLABORATING  
42 NURSE PRACTITIONER shall be clearly posted in the practice setting of  
43 the nurse practitioner.

44 [(d)] (IV) The practice protocol shall reflect current accepted  
45 medical and nursing practice, OR WHERE APPLICABLE THE CURRENT ACCEPTED  
46 NURSING PRACTICE. The protocols shall be filed with the department  
47 within ninety days of the commencement of the practice and may be  
48 updated periodically. The commissioner shall make regulations establish-  
49 ing the procedure for the review of protocols and the disposition of any  
50 issues arising from such review.

51 [(e)] (V) No physician OR, WHERE APPLICABLE, NURSE PRACTITIONER, shall  
52 enter into practice agreements with more than four nurse practitioners  
53 who are not located on the same physical premises as the collaborating  
54 physician OR COLLABORATING NURSE PRACTITIONER.

55 (B) (I) THE PRACTICE OF REGISTERED PROFESSIONAL NURSING BY A NURSE  
56 PRACTITIONER, CERTIFIED UNDER SECTION SIX THOUSAND NINE HUNDRED TEN OF

1 THIS ARTICLE AND PRACTICING FOR MORE THAN THIRTY-SIX MONTHS AND THREE  
2 THOUSAND SIX HUNDRED HOURS, MAY INCLUDE THE DIAGNOSIS OF ILLNESS AND  
3 PHYSICAL CONDITIONS AND THE PERFORMANCE OF THERAPEUTIC AND CORRECTIVE  
4 MEASURES WITHIN A SPECIALTY AREA OF PRACTICE.

5 (II) PRESCRIPTIONS FOR DRUGS, DEVICES AND IMMUNIZING AGENTS MAY BE  
6 ISSUED BY A NURSE PRACTITIONER, UNDER THIS PARAGRAPH AND SECTION SIX  
7 THOUSAND NINE HUNDRED TEN OF THIS ARTICLE. THE NURSE PRACTITIONER SHALL  
8 OBTAIN A CERTIFICATE FROM THE DEPARTMENT UPON SUCCESSFULLY COMPLETING A  
9 PROGRAM INCLUDING AN APPROPRIATE PHARMACOLOGY COMPONENT, OR ITS EQUIV-  
10 ALENT, AS ESTABLISHED BY THE COMMISSIONER'S REGULATIONS, PRIOR TO  
11 PRESCRIBING UNDER THIS PARAGRAPH; PROVIDED THAT ANY CERTIFICATE ISSUED  
12 PURSUANT TO SUBPARAGRAPH (II) OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL  
13 ALSO SATISFY THE REQUIREMENTS OF THIS SUBPARAGRAPH. THE CERTIFICATE  
14 ISSUED UNDER SECTION SIX THOUSAND NINE HUNDRED TEN OF THIS ARTICLE SHALL  
15 STATE WHETHER THE NURSE PRACTITIONER HAS SUCCESSFULLY COMPLETED SUCH A  
16 PROGRAM OR EQUIVALENT AND IS AUTHORIZED TO PRESCRIBE UNDER THIS PARA-  
17 GRAPH.

18 (III) A NURSE PRACTITIONER, CERTIFIED UNDER SECTION SIX THOUSAND NINE  
19 HUNDRED TEN OF THIS ARTICLE AND PRACTICING FOR MORE THAN THIRTY-SIX  
20 MONTHS AND THREE THOUSAND SIX HUNDRED HOURS, SHALL EITHER HAVE A WRITTEN  
21 PRACTICE AGREEMENT AND WRITTEN PRACTICE PROTOCOLS WITH A LICENSED PHYSI-  
22 CIAN IN CONFORMITY WITH THE REQUIREMENTS SET FORTH IN PARAGRAPH (A) OF  
23 THIS SUBDIVISION OR SHALL HAVE COLLABORATIVE RELATIONSHIPS WITH ONE OR  
24 MORE LICENSED PHYSICIANS QUALIFIED TO COLLABORATE IN THE SPECIALTY  
25 INVOLVED OR A HOSPITAL, LICENSED UNDER ARTICLE TWENTY-EIGHT OF THE  
26 PUBLIC HEALTH LAW, THAT PROVIDES SERVICES THROUGH LICENSED PHYSICIANS  
27 HAVING PRIVILEGES AT SUCH INSTITUTION AND QUALIFIED TO COLLABORATE IN  
28 THE SPECIALTY INVOLVED. SUCH COLLABORATIVE RELATIONSHIP SHALL INCLUDE  
29 WRITTEN GUIDELINES FOR PRACTICE THAT PROVIDE FOR THE CRITERIA TO BE USED  
30 REGARDING CONSULTATION, INCLUDING METHODS AND FREQUENCY OF HOW CONSULTA-  
31 TION SHALL BE PROVIDED, COLLABORATIVE MANAGEMENT AND REFERRAL, INCLUDING  
32 EMERGENCY REFERRAL PLANS, TO ADDRESS THE HEALTH STATUS AND RISKS OF  
33 PATIENTS. DOCUMENTATION OF SUCH COLLABORATIVE RELATIONSHIPS SHALL BE  
34 MAINTAINED BY THE NURSE PRACTITIONER AND THE NURSE PRACTITIONER SHALL  
35 MAKE INFORMATION ABOUT SUCH COLLABORATIVE RELATIONSHIPS AVAILABLE TO HIS  
36 OR HER PATIENTS UPON REQUEST. FAILURE TO COMPLY WITH THE REQUIREMENTS  
37 FOUND IN THIS SUBPARAGRAPH SHALL BE SUBJECT TO PROFESSIONAL MISCONDUCT  
38 PROVISIONS AS SET FORTH IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE.

39 (IV) THE WRITTEN GUIDELINES FOR PRACTICE SHALL REFLECT CURRENT  
40 ACCEPTED MEDICAL AND NURSING PRACTICE AND SHALL BE FILED WITH THE  
41 DEPARTMENT, ALONG WITH AN ATTESTATION BY THE NURSE PRACTITIONER IDENTI-  
42 FYING THE PHYSICIAN, PHYSICIANS, OR HOSPITAL THAT HAVE AGREED TO PARTIC-  
43 IPATE IN THE COLLABORATIVE RELATIONSHIP PURSUANT TO SUCH WRITTEN GUIDE-  
44 LINES, WITHIN NINETY DAYS OF THE COMMENCEMENT OF THE PRACTICE AND MAY BE  
45 UPDATED PERIODICALLY. THE COMMISSIONER SHALL MAKE REGULATIONS ESTABLISH-  
46 ING THE PROCEDURES FOR THE REVIEW OF WRITTEN GUIDELINES AND THE DISPOSI-  
47 TION OF ANY ISSUES ARISING FROM SUCH REVIEW.

48 [(f)] (C) Nothing in this subdivision shall be deemed to limit or  
49 diminish the practice of the profession of nursing as a registered  
50 professional nurse under this article or any other law, rule, regulation  
51 or certification, nor to deny any registered professional nurse the  
52 right to do any act or engage in any practice authorized by this article  
53 or any other law, rule, regulation or certification.

54 [(g)] (D) The provisions of this subdivision shall not apply to any  
55 activity authorized, pursuant to statute, rule or regulation, to be

1 performed by a registered professional nurse in a hospital as defined in  
2 article twenty-eight of the public health law.

3 (E) THE DEPARTMENT SHALL REVIEW THE COMPONENTS COMMONLY FOUND IN THE  
4 WRITTEN GUIDELINES FOR PRACTICE FILED WITH THE DEPARTMENT AND SHALL ALSO  
5 ESTABLISH A SURVEY FORM, WHICH SHALL BE MADE AVAILABLE TO PHYSICIANS AND  
6 NURSE PRACTITIONERS LICENSED IN THE STATE, IN ORDER TO SOLICIT COMMENTS  
7 REGARDING THE PRACTICAL IMPLEMENTATION AND FUNCTIONALITY OF COLLABORA-  
8 TIVE AGREEMENTS BETWEEN NURSE PRACTITIONERS AND COLLABORATIVE RELATION-  
9 SHIPS BETWEEN A NURSE PRACTITIONER AND A PHYSICIAN AND THE IMPACT OF  
10 SUCH AGREEMENTS AND RELATIONSHIPS TO THE PROVISION OF HEALTH CARE  
11 SERVICES WITHIN THE STATE. THE COMMISSIONER, IN CONSULTATION WITH THE  
12 COMMISSIONER OF HEALTH, SHALL ISSUE A REPORT THAT SUMMARIZES THE COMPO-  
13 NENTS COMMONLY FOUND IN THE WRITTEN GUIDELINES FOR PRACTICE AND THE  
14 COMMENTS RECEIVED RELATING TO COLLABORATIVE AGREEMENTS AND COLLABORATIVE  
15 RELATIONSHIPS ALONG WITH INFORMATION THAT INCLUDES, BUT IS NOT LIMITED  
16 TO: THE NUMBER OF NURSE PRACTITIONERS PRACTICING FOR FEWER THAN THIRTY-  
17 SIX MONTHS AND THREE THOUSAND SIX HUNDRED HOURS THAT PRACTICE PURSUANT  
18 TO A COLLABORATIVE AGREEMENT WITH A PHYSICIAN; THE NUMBER OF NURSE PRAC-  
19 TITIONERS PRACTICING FOR FEWER THAN THIRTY-SIX MONTHS AND THREE THOUSAND  
20 SIX HUNDRED HOURS THAT PRACTICE PURSUANT TO A COLLABORATIVE AGREEMENT  
21 WITH A NURSE PRACTITIONER FOR SIX MONTHS AND THE NUMBER OF THESE NURSE  
22 PRACTITIONERS THAT EXTEND A COLLABORATIVE AGREEMENT FOR AN ADDITIONAL  
23 SIX MONTHS UPON A SHOWING OF GOOD CAUSE SUBJECT TO THE APPROVAL OF THE  
24 DEPARTMENT; THE NUMBER OF NURSE PRACTITIONERS PRACTICING FOR MORE THAN  
25 THIRTY-SIX MONTHS AND THREE THOUSAND SIX HUNDRED HOURS THAT PRACTICE  
26 PURSUANT TO A COLLABORATIVE RELATIONSHIP WITH A PHYSICIAN; OTHER INFOR-  
27 MATION THE DEPARTMENT DEEMS RELEVANT, INCLUDING BUT NOT LIMITED TO, ANY  
28 RECOMMENDATIONS FOR THE CONTINUATION OR AMENDMENTS TO THE PROVISIONS OF  
29 THIS SECTION RELATING TO COLLABORATIVE AGREEMENTS OR COLLABORATIVE  
30 RELATIONSHIPS. THE COMMISSIONER SHALL SUBMIT THIS REPORT TO THE GOVER-  
31 NOR, THE SPEAKER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE,  
32 AND THE CHAIRS OF THE ASSEMBLY AND SENATE HIGHER EDUCATION COMMITTEES BY  
33 SEPTEMBER FIRST, TWO THOUSAND SIXTEEN.

34 S 3. This act shall take effect on the one hundred eightieth day after  
35 it shall have become a law and shall expire June 30, 2018 when upon such  
36 date the provisions of this act shall be deemed repealed; provided,  
37 however, that effective immediately, the addition, amendment and/or  
38 repeal of any rule or regulation necessary for the implementation of  
39 this act on its effective date is authorized and directed to be made and  
40 completed on or before such effective date.